
(2020) 03 MP CK 0060
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4750 Of 2020

Chunnibai

APPELLANT

Vs

State Of Madhya Pradesh And Ors

RESPONDENT

Date of Decision : 13-03-2020

Acts Referred:

Madhya Pradesh Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 — Section 40, 40(1), 40(1)(a), 92
Madhya Pradesh Panchayats (Appeals And Revisions) Rules, 1995 — Rule 3
Constitution Of India, 1950 — Article 226

Citation : (2020) 03 MP CK 0060

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Advocate : Ajay Jain, Vinay Gandhi

Final Decision : Disposed Off

Judgement

The petitioner who was elected as Sarpanch Gram Panchayat Oon Bujurg is aggrieved with the order dated 28/1/2020 whereby she has been

removed from the post of Sarpanch u/S.40(1)(a) of the M.P. Panchayati Raj Evam Gram Swaraj Adhiniyam, 1993 and has been disqualified for

contesting the election for a period of six years u/S.40(1) of the Act.

Submission of learned counsel for petitioner is that the impugned order has been passed in violation of the principles of natural justice as no enquiry

has been conducted by the CEO, Jilla Panchayat i.e. the competent authority and the earlier enquiry report was obtained behind the back of the

petitioner and further that no witnesses have been examined at the stage of passing of the impugned order.

As against this, learned counsel for respondents has raised a preliminary objection that the petitioner has remedy of appeal against the impugned order.

Having heard the learned counsel for parties and on perusal of the record, it is noticed that since the petitioner has raised a plea of violation of principles of natural justice, therefore, the availability of alternate remedy will not be a bar in entertaining the present writ petition. Accordingly, the preliminary objection raised by the respondents is rejected.

The record reflects that the petitioner was given the show cause notice dated 12/12/2019 for initiating action u/S.40 of the Act. The petitioner had filed

the reply to the said show cause notice and thereafter the impugned order has been passed. Before passing the impugned order, no enquiry has been

conducted and no witnesses have been examined. In the impugned order, the competent authority has placed reliance upon the enquiry report dated

19/11/2019 but the said enquiry was done behind the back of the petitioner. In terms of Sec.40(1) of the Act, the enquiry was required to be

conducted by the prescribed authority. The co-ordinate bench of this court by the order dated 19/11/2019 passed in WP No.7323/2019 in the case of

Ajay Joshi Vs. State of MP & Ors considering the similar issue after noting the provisions of Sec.40 of the Act has held:-

“It is clear from the aforesaid provision that the State Government or the prescribed authority may after such enquiry as it may deem fit, remove

an office-bearer if he has been found guilty of misconduct in the discharge of his duties or if his continuance in office is undesirable in the interest of

public provided that no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office.

It is settled law that the proceedings u/s. 40 of the Act of 1993 are required to be conducted as a regular trial. The authority is required to obtain reply

from Surpanch and thereafter the opportunity to the parties to lead evidence and then only an elected office-bearer can be removed from the post if

misconduct is found proved. In the present case, the show-cause notice was issued to the petitioner, he appeared before the CEO and on the very

same day, he has been removed from the Surpanch merely on the ground that he had deposited the amount, therefore, the CEO before passing the

order of removal did not follow the prescribed procedure under law, hence impugned order is unsustainable in law.

5. Even otherwise, in the present case, Rs.9.19 Lakhs was sanction for construction of the CC road, out of which, Rs.8.9088 Lakhs was incurred for

construction of the road and remaining amount could not be spent because there was some dispute in construction of 15 mtrs. road. The enquiry was

conducted and in which, finding was given that there was no serious irregularity found, only the amount is liable to be recovered from the Surpanch

and Secretary. Recovery of the amount can be made u/s. 92 of the Act of 1993, therefore, show-cause notice was issued to the petitioner and

immediately after receipt of the notice, without any protest the petitioner has deposited the amount. If the petitioner has deposited without any protest

the amount which could not be spent for construction of the road because of some dispute, it cannot be held that he has committed any misconduct.

The apex Court in the case of Union of India V/s. J. Ahmed : (1979) 2 SCC 286 has held in Para 11 as under:-

11. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to

public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of

judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences

directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be

very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often

be productive of more harm than deliberate wickedness or malevolence. But in any case, failure to attain the highest standard of

efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct

Rules as would indicate lack of devotion to duty.

There cannot be a mechanical order u/s. 40 of the Act of 1993 and there has to be some application of mind. The authority is required to examine as

to whether the act of office-bearer amounts to misconduct or his continuance in the office is undesirable. Without following the prescribed procedure,

order of removal of office-bearer from the post cannot be passed. Hence, the impugned order is unsustainable and is liable to be quashed.

6. Learned Govt. Advocate appearing for the respondents/State and learned counsel appearing for the intervenor submit that the petitioner is having

remedy to approach the appellate authority against the impugned order but he has directly filed the present petition which is not maintainable.

7. It is not in dispute that the order passed by the CEO u/s. 40 of the Act of 1993 is appealable under the provisions of M.P. Panchayats (Appeals and

Revisions) Rules, 1995 (hereinafter referred to as 'the Rules of 1995'), but for filing an appeal, there has to be a speaking and reasoned order on

merit that too on the basis of evidence came on record and then only the appeal can be filed challenging such order on various grounds. Here in the

present case, the CEO without giving any opportunity and without following the prescribed procedure has passed the impugned order of removal in

mechanical manner against the petitioner. There is no ground available to the petitioner to file an appeal. Even otherwise, the impugned order of

removal has been passed without following the prescribed procedure and in violation of principles of natural justice as held by the apex Court in the

case of Whirlpool Corporation V/s. Registrar of Trade Marks : AIR 1999 SC 22 the writ petition under Article 226 of the Constitution of India is

maintainable.

7. In view of the foregoing discussion, the petition deserves to be and is hereby allowed. The impugned order dated 20.3.2019 removing the petitioner

from the post of Surpanch is hereby quashed.

No order as to costs.

Having regard to the aforesaid and considering the fact that the impugned order has been passed by the competent authority without conducting any

enquiry and without complying with the principles of natural justice, therefore, the impugned order dated 28/1/2020 cannot be sustained and is hereby

set aside. It has been pointed out that meanwhile the tenure of the petitioner is over but the issue of disqualification for a period of six years will

survive. Hence, the liberty is granted to the competent authority to pass a fresh order keeping in view the legal position noted above.

The writ petition is accordingly disposed of.

c.c as per rules.